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(Proceeding Terminated)

Released: February 25, 2000

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 10 FCC Rcd 7671 (1995)("Notice"), proposing the reallocation of Channel 223C2 from Ankeny to West Des Moines, Iowa. The Notice was issued in response to a petition filed by Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines ("Petitioner").¹ Petitioner also requested modification of its license for Station KJJY-FM to specify operation at the new location. Petitioner filed comments restating its interest in the allocation of Channel 223C2 at West Des Moines.²

2. The proposed reallocation of Channel 223C2 from Ankeny to West Des Moines, Iowa was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990)("Change of Community"). West Des Moines is located within the urbanized Area of Des Moines, Iowa with a population of 39,387, while the population of Des Moines is 193,187. Pursuant to the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982), petitioner originally claimed in its rule making petition that the reallocation of Channel 223C2 to West Des Moines would result in a preferential arrangement of allotments since it

¹On October 3, 1996, petitioner was sold to WCSO Broadcasting Ltd. Partnership which subsequently changed its name to Two Rivers Broadcasting Ltd. Partnership (BALH-960617GR).

²Fuller-Jeffrey also filed additional comments regarding the community of West Des Moines at the request of the staff.

would provide the community with its first local aural transmission service, without depriving Ankeny (population 18,482) of its sole local aural transmission service. However, the Notice found that the proposal will not provide West Des Moines with a first local service but could result in a second local service. This is due to the fact that non-commercial FM Station KWDM, Channel 204A is licensed to West Des Moines, and non-commercial FM stations are now counted as transmission and reception services for purposes of Section 307(b) allotment comparison. See Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd at 7097 and n. 19; Valley Broadcasters, Inc., 5 FCC Rcd 2785 (1990); Channel 32 Broadcasting Company, 6 FCC Rcd 5188 (1991), recon. denied, 7 FCC Rcd 1694 (1992).

3. Nevertheless since West Des Moines is within the Des Moines urbanized area, the petitioner was requested to provide a showing to demonstrate that West Des Moines is sufficiently independent of the Des Moines urbanized area to warrant a second local service using the Commission's three factors enumerated in RKO General (KFRC), 5 FCC Rcd 3222 (1990) and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) and Elizabeth City, North Carolina and Chesapeake, Virginia, 9 FCC Rcd 3586 (1994).³ In response to the request petitioner reiterated its initial showing and submitted the following information. Under the first criteria signal-population coverage, petitioner notes that there are a total of twenty-four stations, nine AM and fifteen FM stations that provide service to the general area that includes both West Des Moines and the Des Moines Urbanized Area. Fifteen of the twenty-four stations cover all of both West Des Moines and the Des Moines Urbanized Area with a city-grade signal. Eight stations cover some part of both West Des Moines and the Des Moines Urbanized Area with their city-grade signals. One other station covers a part of the Des Moines Urbanized Area, but no part of West Des Moines, with its city-grade signal. Under the interdependence criteria petitioner states that of West Des Moines's population of 39,387, approximately 47% (18,046 residents) participate in the work force. Of this work force, approximately 32% (5,853) work in West Des Moines and approximately 68% (12,193) work outside of West Des Moines. Approximately 9,189 people work in the central city of Des Moines. Petitioner states that West Des Moines is served by a daily newspaper out of Des Moines, the Des Moines Register. There are no television stations

³Generally, Huntington and Tuck showings are required to justify a first local service preference, not a second local. However, as explained infra, the petitioner has met the requirements to show that West Des Moines is sufficiently independent of the Des Moines urbanized area so that the Des Moines stations need not be attributed to West Des Moines. There are eight factors relevant to interdependence: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community's leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the municipal services such as police, fire protection, schools, libraries. See KRFC *supra*.

licensed to serve West Des Moines. Four stations are licensed to serve Des Moines.⁴ Petitioner includes statements from West Des Moines community leaders and residents which recognize West Des Moines' status as a separate community. Petitioner states that West Des Moines is an incorporated city within the boundaries of Polk County, Iowa. West Des Moines has its own elected city council, mayor and an appointed city manager. Petitioner further states that U.S. West publishes a primary telephone directory entitled, "Des Moines and Surrounding Communities." The phone book contains listings for West Des Moines residences and businesses as well as listings for businesses and residences in other communities within the Greater Des Moines area.⁵ Petitioner also notes that West Des Moines has its own zip code. Regarding local facilities, petitioner contends that as of 1993, West Des Moines had 4,714 businesses operating within its boundaries. Petitioner further submits that West Des Moines' transportation needs are provided by the "Metro Transit Authority", which serves West Des Moines with daily bus service in & out of the central city of Des Moines. West Des Moines relies upon the Des Moines International Airport for commercial airline service. West Des Moines does not have a hospital and is dependent upon several large medical centers operating within the boundaries of the City of Des Moines. West Des Moines has its own police, fire protection, schools, and Regarding the advertising market, Arbitron and A.C. Nielsen classify the Des Moines Metro market as including the counties of Polk, Warren, Dallas, and Story, Iowa. West Des Moines is located in Polk County Statistical Area (SMSA). Petitioner concludes that from the perspective of advertisers and those interested media purchases in the area, there is no distinction between West Des Moines and the Des Moines Urbanized Area.

4. Discussion. As a threshold matter, we address an issue regarding the compliance of the petitioner's rulemaking proposal with the Commission's minimum distance separation requirements. In its rulemaking petition, Fuller-Jeffrey proposes to use as the reference coordinates for Channel 223C2 at West Des Moines the current license site for Station KJJY-FM, Ankeny.⁶ At the time that the rulemaking proposal was filed, these coordinates complied fully with the Commission's minimum distance separation requirements set forth in Section 73.207 of the Commission's Rules. However, after the Notice of Proposed Rule Making was released in this proceeding, an application (BPH-960322IC) was filed by Station KTWB(FM), Channel 224A, Ottumwa, Iowa, for a one-step upgrade to Channel 224C2, using the contour protection provisions of Section 73.215 of the Rules. This application was subsequently granted by the staff.

⁴KCCI-TV, Channel 8; KDSM-TV, Channel 17; WHO-TV, Channel 13; and KDIN-TV, Channel 11. Fuller-Jeffrey notes that a single cable system serves the Des Moines Urbanized Area which is operated by an affiliate of TCI. There is one low-power, noncommercial educational station (KWDM) licensed to serve West Des Moines. There are no AM radio stations licensed to serve West Des Moines.

⁵U.S. West also publishes a "Des Moines West" directory in which West Des Moines listings are grouped with those of the communities Clive, Johnston, Urbandale, and Windsor Heights, Iowa.

⁶ These coordinates are 41-39-53 and 93-45-24.

Although the reference coordinates for Fuller-Jeffrey's Station KJJY(FM) at both Ankeny and West Des Moines are fully protected through the contour protection provisions of Section 73.215, there is currently a short-spacing of 0.9 kilometers under the minimum distance separation requirements set forth in Section 73.207. We take this opportunity to clarify that the 0.9-kilometer short-spacing does not render Fuller-Jeffrey's rulemaking proposal unacceptable or defective. Since Fuller-Jeffrey's rulemaking proposal was filed before the Ottumwa application, it was entitled to protection under the Commission's policy and rules set forth in *Conflicts between Rulemaking Proposals and Applications*, 7 FCC Rcd 4917 (Comm. 1992), *recon. granted in part and denied in part*, 8 FCC Rcd 4743 (Comm. 1993). The Ottumwa application affords the Fuller-Jeffrey rulemaking proposal the requisite protection under Section 73.208(b) of the Commission's Rules – that is, it uses the contour protection provisions of Section 73.215 of the Rules to protect the rulemaking proposal. Likewise, the Fuller-Jeffrey proposal complied with the requirements of Section 73.208(a) of the Commission's Rules at the time that it was filed. That rule requires that rulemaking proposals be fully spaced, utilizing the minimum distance separation requirements set forth in Section 73.207 of the Rules, with respect to authorized stations (i.e. licenses and construction permits), vacant allotments, and previously cut-off applications as set forth in our *Conflicts between Rulemaking Proposals and Applications*. Under these circumstances, it would be unfair to the rulemaking petitioner to consider that its proposal is now unacceptable because of a short-spacing that was subsequently and properly authorized by the staff. We have taken this approach in some prior cases and reaffirm their applicability. See e.g., South Burlington, Vermont, 6 FCC Rcd 7111 (Allocations Branch 1991). Moreover, this rationale is similar to that utilized in the recent case of Killeen and Cedar Park, TX, MM Docket 98-176, DA 00-143, released February 2, 2000. Therein, we held that it would be unfair for a station seeking to change its community of license and to remain at its current license site with no facilities changes not to be able to change its community of license because of a short-spacing created by the grant of an application using the contour protection provisions of Section 73.215.

5. Based on the information before us, we find that petitioner has sufficiently demonstrated that West Des Moines is a separate and independent community from the Des Moines Urbanized Area and that the Des Moines radio stations need not be attributed to West Des Moines. We find that although some of the factors support a finding of interdependence, a majority of the eight factors support a finding of independence (e.g., factors three, four, five, and eight as set forth in footnote four). Supra. Our view is particularly buttressed by the large population of West Des Moines, the large number of commercial establishments and its municipal services and school system. See Change of Community, supra. Having made this determination, we must compare the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities. See Revision of FM Assignment Policies and Procedure, 90 FCC 2d 88, 92 (1982).

6. In making this analysis, we note that the reallocation of Channel 223C2 to West Des Moines would provide West Des Moines with its second local and first competitive transmission service, thus

triggering priority (4) "other interest matters", while Ankeny already has local transmission service, thus again triggering priority (4). Under priority (4), the issue is whether there should be a second local and first competitive service in West Des Moines or Ankeny. Since West Des Moines has a larger population (31,702) than Ankeny (18,482),⁷ we believe that the public interest is better served by providing a second local and first competitive transmission service to West Des Moines rather than retaining the transmission service in Ankeny. Moreover, there will be no disruption in reception service to residents of Ankeny because petitioner is not moving its transmitter. Ankeny will continue to receive local service from Station KMXD-FM, Channel 292A, while West Des Moines will receive local service from Station KWDM-FM. Based on the above information, we find that the public interest would be served by reallocating Channel 223C2 from Ankeny, Iowa to West Des Moines, Iowa.

7. Channel 223C2 can be allotted to West Des Moines, Iowa, in compliance with the Commission's minimum distance requirements at the licensed site of Station KJJY-FM.⁸ In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license for Station KJJY-FM to specify West Des Moines, as its community of license on Channel 223C2 in lieu of its use at Ankeny, Iowa.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 10, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Ankeny	292A
West Des Moines	223C2

9. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station KJJY-FM, Ankeny, Iowa, IS MODIFIED, to specify operation at West Des Moines, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License for the community as specified above. Any changes except those specified require authorization pursuant to an application for construction permit (FCC Form 301). except prior

⁷Population figures are from the 1990 U.S. Census, unless otherwise noted.

⁸The coordinates for this allotment are North Latitude 41-39-53 and West Longitude 93-45-24.

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License except for the community as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding contact Arthur D. Scrutchins, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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